

APPENDIX G

LAND EXCHANGE CRITERIA

The purpose of this paper is to: (1) present Bureau of Land Management (BLM) land exchange policy; (2) examine the BLM land use planning process in relation to decisions in the Great Divide Resource Area Record of Decision/ Approved Resource Management Plan (RMP); and (3) provide clarification and explanation of the Great Divide RMP decisions as they relate to land exchange proposals, to assist in determining if a proposed exchange is consistent with BLM policy and the RMP decisions.

This paper will help land exchange proponents formulate realistic exchange proposals, provide BLM staff and management with clear and consistent guidelines against which to evaluate proposals, and better inform the public about the BLM land exchange program.

1. Land Exchange Laws, Regulations, and Policy

The Federal Land Policy and Management Act (FLPMA)

In our nations history, federal lands have been used as a form of payment when the nation was short of cash, to promote settlement of western lands, and to promote resource development policies. Up until the mid-twentieth century, the ultimate goal for federal lands administered by the BLM (i.e. public lands) was to transfer them to private ownership.

The Federal Land Policy Management Act (FLPMA), passed in 1976, defines public lands as “...any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except --- (1) lands located on the Outer Continental Shelf; and (2) lands held for the benefit of Indians, Aleuts, and Eskimos.” The FLPMA marked a change in federal policy toward the public lands. In the Act, Congress declared that it was the policy of the United States that:

The public lands be retained in Federal ownership, unless as a result of the land use planning procedure... it is determined that disposal of a particular parcel will serve that national interest (43 USC 1701, Sec. 102 (a) (1)). Uniform procedures for any disposal of public land, acquisition of nonfederal land for public purposes, and the exchange of such lands be established by statute, requiring each disposal, acquisition, and exchange to be considered with the prescribed mission of the

department or agency involved, and reserving to the Congress review of disposal in excess of a specified acreage (43 CFR 1701, Sec. 102 (a)(10)).

Section 206 of FLPMA further refined Congress' intention about land exchanges.

A tract of public land or interests therein may be disposed of by exchange ... [when it is determined] that the public interest will be well served by making that exchange: *Provided*, That when considering public interest the Secretary concerned shall give full consideration to better Federal land management and needs of State and local people, including needs for lands for the economy, community expansion, recreation areas, food fiber, minerals, and fish and wildlife and the Secretary concerned finds that the values and the objectives which Federal lands or interests and the public objective they could serve if acquired.

Federal law prohibits exchange of public land in one state for private land in another, unless authorized by an act of Congress. Exchanges are to be of equal value, based on a fair market appraisal, and do not have to be of equal acreage. In other words, exchanges are made on a value-for-value basis rather than an acre-for-acre basis. Furthermore, land exchanges are a discretionary bureau action. BLM is not obligated to process every proposal it receives, even if the proposal has some merit. BLM evaluates exchange proposals in light of existing workloads, funding, and other program priorities when deciding to pursue a land exchange proposal.

Bureau of Land Management Exchange Policy

BLM interpreted congressional intent in FLPMA and established 14 general land exchange principles at BLM Manual 2200.06 A (1984). The 14 principles set forth general BLM policy for the exchange of public lands or interest. They represent a commitment by BLM to implement the land exchange policies of FLPMA, consistent with BLM's other statutory obligations. The complete text of all 14 principles is presented in Attachment A.

The BLM Wyoming State Office issued a public land exchange and sale policy for Wyoming in May 1996 (WY-IM-96-067, Attachment B). The Wyoming BLM policy enlarges on the concept of public interest from Section 206 of FLPMA stating.

All exchange proposals must provide significant public benefits. If an exchange proposal doesn't result in public access, in the acquisition of critical wildlife habitat, in improved management, or in the acquisition of some other significant resource value, the exchange proposal will not be pursued.

In summary, public land exchanges in Wyoming must:

- (1) serve the national interest,
- (2) meet public needs, and/or
- (3) provide significant public benefits.

Land exchanges may:

- (1) be used to acquire private inholdings in federal conservation areas,
- (2) consolidate or unite surface and subsurface estates, and
- (3) consolidate ownership and boundary changes to form more logical and efficient management areas.

Federal Land Exchange Facilitation Act (FLEFA)

This Act was passed in August 1988, and final regulations were published in November 1993. These regulations are process-oriented procedures and do not change basic federal or bureau policy toward acceptable exchange proposals.

2. Resource Management Plans (RMPs)

The resource and land use management decisions in BLM resource management plans (RMPs) are developed to allocate appropriate resource and land uses for the public lands. RMP decisions also establish practices to manage and protect public lands and resources, and they may identify lands suitable for consideration for disposal or acquisition. Public land users contribute to the development of RMPs by identifying problems, concerns, and issues involving the public lands in the planning areas; the BLM ensures that the environmental analyses for the RMPs and the RMP decisions are responsive to these issues and concerns, to the extent allowed by law. RMP decisions must also give consideration to and be consistent with state and local government land use plans, to the extent allowed by law.

Historical Context and the Great Divide RMP

RMPs are issue-driven documents. That is, public comment and BLM staff identify the public land and resource use problems, concerns, and issues that will be addressed in developing the RMP. Thus, RMPs strongly reflect the concerns in existence when they are prepared. Data was gathered for the Environmental Impact Statement (EIS) for the Great Divide RMP (Medicine Bow – Divide RMP Draft and Final EIS) between 1984-1986. The Final EIS was issued in February 1987, and the Record of Decision (ROD) for the Great Divide RMP was signed in November 1990.

This period marked the conclusion of the Asset Management Program. This initiative sought to dispose of unneeded or unused federal assets (including sale of federal lands). Proceeds from these sales were intended to reduce the national debt and agency operating costs. The program ended in 1986 after only a small amount of federal land was disposed of. In the Great Divide Resource Area (GDRA), 160 acres in Laramie County were sold. Another factor influencing the land tenure issue (sales and exchanges) in the RMP was the mineral industry “bust” from 1980-1982. With a decline in industry operations, population declined. Carbon County population declined from 22,000 in 1980 to approximately 16,000 in 1984. A declining economy and reduced land values contributed to a lessened interest in federal land exchanges or sales at that time.

Great Divide RMP Decisions

The Great Divide RMP addressed the land tenure issue within the context of the above circumstances and interests. The selections below from the RMP Draft EIS provide a clear summary of the intent of the land tenure decisions in the RMP.

The BLM’s management programs are affected by the broken landownership pattern in portions of the planning area. Implementing management plans on scattered lands is difficult because management practices on surrounding private lands tend to influence land use on public lands. Most of the small parcels lack legal public access, and unauthorized use is common. Often the costs of detecting and terminating trespass, managing grazing use, and processing rights-of-way and other applications for that land use exceed the monetary returns from such uses. Landownership adjustments present opportunities to improve this situation. Such adjustments can be made through sale or exchange.

Exchanges serve several purposes, among them consolidation of landownership to facilitate resource management. Exchanges also can help in the accomplishment of resource management programs by enabling the BLM to acquire land with high public resource values.

Cities and towns in the planning area may need to acquire land for expansion purposes. These include Baggs, Bairoil, Creston Junction, Rawlins, Red Desert, and Wamsutter. Bairoil's needs are critical because public land is conflicting with the town's orderly expansion. The growing community is surrounded by "blocked" public land. Landownership adjustments present an opportunity to address this problem.

An easement acquisition program in the checkerboard would provide access only to public lands within, at most, one mile of the particular road acquired. However, there are opportunities in the planning area for acquisition of public access to areas that could meet important resource management objectives. Acquisition of easements can be accomplished through either the exchange program or the access program. (p. 109-110).

The Great Divide RMP identifies approximately 66,000 acres as "available for consideration for disposal" by employing the "isolated, difficult or expensive to manage, or need-for community expansion" disposal criteria in FLPMA. These lands are specifically identified on Maps 10-13 of the RMP. They comprise all the public lands in Laramie County, most of the public lands in southern Albany County, and selected parcels around the communities of Baggs, Bairoil, Creston Junction, Rawlins, Red Desert, Saratoga, and Wamsutter. No other specific, potential public land disposal areas are identified in the RMP. It should be also noted that the inventory of public lands that meet the FLPMA disposal criteria was not completed for the entire RMP planning area. The RMP will be updated to include wording to clarify that these lands are simply those that were identified during the planning effort as meeting the FLPMA disposal criteria, but no RMP decision has been made to the effect that they will be disposed of or that they are the only public lands in the planning area that may be considered for disposal. The RMP does state, "Proposals for disposal of lands not identified as meeting the FLPMA criteria will be considered if they are consistent with the objectives of the RMP" (p.15). The RMP also states, "The preferred method of disposal or acquisition of lands by BLM will be through exchanges" (p.15).

The RMP does not identify land acquisition areas but does identify areas needing improved access.

The RMP Decisions in Current Context

Land ownership adjustment was not a primary issue during development of the Great Divide RMP and is addressed in the RMP in only a narrow context. Consequently, there is little guidance in the RMP as to how land exchanges should be pursued or what priority they should receive.

Certain phrases used in the RMP decisions are unclear as to their intent when applied to current land exchange proposals. Following is the clarification of these terms in relation to exchanges.

The wording to “**protect, maintain or improve**” is applied to a variety of resource decisions in the RMP, for example, “maintain or improve ... high priority standard habitat sites” or “protect, maintain and control a viable, healthy herd of wild horses” (p.41). The use of this term in relation to any resource does not preclude disposal of public lands upon which these resources occur or rely. The operative objective of these decisions is toward the resource as a whole. If disposal of public lands containing a specific resource will not reduce the bureau’s ability to protect, maintain, or improve, or if through the exchange, private lands would be acquired that would advance the resource objectives, then the exchange would be consistent with RMP objectives.

The concept of **blocking public land into larger parcels** (considering landownership), and the relative size of those parcels, is an ill-defined concept in the RMP. Blocking public land into larger parcels, absent any other resource benefits, is not necessarily in the public interest. In additions, there is no minimum size of block that would automatically preclude consideration of an exchange proposal. Certainly, the larger the block, the more efficient and effective future land management would be. However, highly-valued, narrowly-distributed resources could make consolidation of a relatively few acres a reasonable land exchange proposal. This can apply to a block of federal land with valuable or unique resources in an area that is dominated by private land or it can refer to creating large blacks of federal and private land in areas of checkerboard land ownership. Consolidation of land ownership in and of itself, however, is not sufficient justification for pursuing an exchange.

The issue of exchanging **like-for-like resources and lands within the immediate vicinity of each other** also influences the feasibility of an exchange proposal. If the resources on proposed exchange parcels are similar, there would be less disagreement over the relative value of these lands. However, parcels are seldom alike. Thus, the bureau must consider giving up one type of resource to acquire another. Such disparity does not in and of itself preclude consideration of an exchange proposal. Experience has shown that the more dissimilar the lands, the more difficult the proposal will be to complete. As with resources, if parcels are adjacent, or at least, near each other, the proposal would be less complicated than if the parcels are widely separated.

3. Land Exchange Criteria

The final part of this document will clarify the possibilities for land exchanges within the context of RMP decisions. If land exchanges involved identical lands and resource of equal value, and met the differing objectives of private landowners and federal agencies, there would be little controversy about these proposals. In real situations this is never the case. Land exchanges often include a diverse mix of resources on often dissimilar lands, located at some distance from each other. The larger the exchange proposal, the greater, or more complex, the dissimilarities.

For each of the resource categories below, a range of attributes, from more to less acceptable, is given in the context of land exchange proposals. Some attributes may preclude disposal and others will have little or no influence on evaluating a proposal. A point ranking system will not be used because the variable nature of these issues is best addressed through a qualitative, narrative format.

General Criteria

All land exchanges will be in conformance with national BLM policy in BLM Manual 2200 and Wyoming BLM Policy in WY-IM-96-067, summarized above.

The public lands identified on Maps 10-13 of the RMP meet the FLPMA criteria and are suitable for disposal consideration.

Land exchanges should improve BLM's public land and resource management capabilities. This can be achieved by protecting resources and/or implementing management actions on acquired public land or disposing of public lands that are difficult or expensive to manage and which contain little public value.

Land exchanges should create more logical and efficient land ownership patterns. This can be accomplished by making boundaries less irregular, matching legal and physical access or boundary areas, and reducing the number of ownership parcels, either federal or nonfederal, in an area. Every effort will be made to preserve or enhance public access through the exchange process.

Conservation easements or other protective covenants are occasionally used to provide for continued protection of valuable public resources when the land itself is transferred out of federal ownership.

Areas of Critical Concern (ACEC)

ACECs are “areas within the public lands where special management attention is required...to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from hazards” [FLPMA, Sec 103 (a)]. Neither FLPMA nor the Great Divide RMP decisions concerning the four designated ACECs in the RMP planning area preclude disposal of public lands within an ACEC.

The attribute scale for land exchanges involving ACEC's is:

- Nonfederal land within an ACEC for public land outside the ACEC boundary.
- Nonfederal land for public land within an ACEC (land ownership consolidation), provided the integrity and management objectives of the ACEC could be maintained, wither by the new land ownership alignment or by a conservation easement on the disposed public land.
- A proposal that results in a better defined ACEC boundary, provided the management objectives of the ACEC are preserved on the disposed public land.
- Public land within an ACEC for nonfederal land outside an ACEC, provided the management objectives of the ACEC are preserved on the disposed public land.

In addition to the general ACEC attribute scale, any land exchange proposal that would improve public access in the Jep Canyon or Shamrock Hills ACEC's would improve a land exchange proposal's ranking.

Cultural Resources

- Public lands containing cultural resources that are neither eligible for nor enrolled on the National Register of Historic Places (Register) or historic trail segments that do not contribute to eligibility for or enrollment on the Register will be considered for exchange.
- Public lands that contain properties that are eligible for or enrolled on the Register will not be considered for exchange unless impacts to

the cultural resources are mitigated by data recovery, documentation, or other acceptable procedure or the cultural resources are reserved to the United States in the patent.

- Public lands that contain contributing historic trail segments will not be considered for exchange, unless the contributing trail segments plus a quarter-mile buffer on both sides of the trail are reserved for the United States in the patent. The setting of the trail would be considered in any exchange.
- Consolidation of National Register-eligible historic or contributing trail segments into federal ownership is acceptable, even if other isolated trail segments on public lands are exchanged, provided, public access to the trail in general is enhanced and/or endangered segments are brought into federal ownership.
- Exchange of public lands containing cultural resources on or eligible for the Register if the nonfederal lands to be acquired held some other resource of exceptional public value (eg., endangered species critical habitat).
- A land exchange involving federal and nonfederal cultural resources of approximately equal amount and value. (It would be difficult to achieve this criterion because identification of like resources would require an inventory of all acquired parcels).

National Natural Landmarks (NNL)

- Nonfederal land within an NNL for public land outside of the NNL boundary.
- Public land for nonfederal land within an NNL (land ownership consolidation), provided the integrity and management objective of the NNL could be maintained, either by the new land ownership alignment or by a conservation easement on the disposed public land.
- A proposal that results in a better defined NNL boundary, provided the management objectives of the NNL are preserved on the disposed public land by a conservation easement.

- Public land within an NNL for nonfederal land outside the NNL, provided the integrity and management objectives of the NNL could be maintained.

Paleontological Resources

- Public lands which contain paleontological resources that are of low value would be considered for exchange.
- Public lands which contain paleontological resources of high scientific importance (usually vertebrate fossils) would not be considered for exchange unless the paleontological resource impacts are mitigated by data recovery or documentation or the paleontological resources are reserved to the United States in a patent.
- An exchange of public lands containing high-value paleontological resources, if the nonfederal lands to be acquired hold some resource of exceptional public value (eg., endangered species critical habitat) would be low preference.
- A land exchange involving federal and nonfederal paleontological resources of approximately equal amount and value would also be low preference. (It would be difficult to achieve this criterion because paleontological resources are inventoried after the exchange parcels are identified, and many are not discovered by a surface examination).

Forest Resources

- The presence of merchantable timber, in and of itself, would not preclude disposal of public lands. Timber values must be considered along with other land values to meet equal-value exchange requirements.
- Public lands adjacent to and having a common boundary with a national forest, or when an existing access road exists, would have an extremely low priority for exchange.

Existing Lands Authorizations and Designations

- Existing right-of-way (ROW) grants will not prevent those public lands containing ROWs from being disposed of. The patent will

require the preservation of the existing authorization until the end of the grant.

- Public lands containing classifications or that are withdrawn from the general land laws (eg., Recreation and Public Purposes Act, Desert Land Act, Power Site Classification, Public Water Reserve withdrawals, Stock Driveway withdrawals, or various mineral withdrawals) are low priority for exchange. However, many of the classification and withdrawal designations are out of date and have not been administratively reviewed and adjusted. If such a designation is present on a selected public land parcel, it should be evaluated according to its own circumstances.

Livestock Grazing Management and Vegetation

- Isolated parcels of public land within predominately private land grazing allotments for nonfederal land outside the grazing allotment. The elimination of isolated parcels of public land from grazing allotments, thereby eliminating the need for continuation of a BLM-administered grazing allotment, would reduce the administrative workload of the BLM and would therefore be a benefit of a land exchange.
- The gain or loss of a particular vegetation type or amount of forage (animal unit months) will not preclude consideration of public lands for disposal.

Mineral Resources

Mineral values will be considered, along with surface values, in determining the total exchange value of land parcels. The extent of mineral deposits is seldom known with a high degree of accuracy. This uncertainty can introduce an element of controversy into an exchange proposal.

- Land exchanges that propose to exchange both surface and mineral estate are preferable to those that do not, provided the total values are equal.
- Proposals that eliminate a mineral and land surface split estate ownership situation by creating a united mineral and land surface ownership are also preferable.

- Lands containing mining claims filed under the General Mining Law may be considered for exchange. Prior to exchange, claims would have to be relinquished by the claimant or a validity exam completed.

Recreation Sites and Special Recreation Management Areas (SRMA)

Continental Divide SRMA and North Platte River SRMA:

- Preferred land exchanges would provide access to and along the Continental Divide National Scenic Trails SRMA and the North Platte River SRMA while disposing of public land outside these areas.
- Exchange of public land along or within either SRMA would require that access be preserved through an easement or reservation.

Shirley Mountain Caves SRMA:

- Nonfederal land within the SRMA for public land outside but not adjacent to the SRMA boundary.
- Nonfederal land within the SRMA for public land outside and adjacent to the SRMA boundary.
- Public land for nonfederal within the SRMA (land ownership consolidation), provided the integrity and management objectives of the SRMA could be maintained, either by the new land ownership alignment or by a conservation easement on the disposed public land.
- Public land within the SRMA for nonfederal land outside, but adjacent to the SRMA, provided the integrity of and management objectives of the SRMA are not impaired.
- Any exchange proposal that resulted in a better-defined SRMA boundary, provided the integrity and management objectives of the SRMA are not impaired.
- Public lands in the SRMA for nonfederal land outside the SRMA, provided the management objectives of the SRMA are preserved on the disposed public land by conservation easement, would be a low priority.

Other Recreation Sites

- Developed recreation sites on public lands (and appropriate buffers around them) would be considered low priority for exchange.

Soil Resources

This section includes consideration of soil productivity, erosion potential, and geologic hazards, such as subsidence and landslide areas.

- Acquisition of nonfederal land containing native, undisturbed vegetation for disturbed or unreclaimed public land.
- Acquisition of nonfederal land that contains geologic hazards known to pose an immediate threat to human health or safety would be low priority. Special circumstances may arise that would make acquisition of a particular geologic hazard advantageous to the BLM (eg., extremely precipitous canyon/cliff country that is very hazardous to human health and safety but is excellent raptor habitat).
- Acquisition of nonfederal land with an ongoing accelerated erosion process, requiring immediate expenditure of funds to correct, for public land would be a low priority (unless BLM was cooperatively working with other agencies to meet national or regional water quality objectives).

Visual Resource Management (VRM)

- VRM classification will not preclude consideration of public lands for exchange.
- BLM exchange of public land in Class I or II VRM areas will be a low priority, unless in special circumstances a conservation easement protects the visual integrity of the area.

Water/Wetlands/Riparian

- Proposals that acquire more wetlands and/or riparian areas than are disposed of.
- Proposals that exchange essentially the same amount, type, and quality of wetlands or riparian areas.

- Proposals that dispose of more wetlands and/or riparian areas than are acquired by BLM, provided the wetlands/riparian areas are protected by a conservation easement.
- Lowest preference for consideration is given to proposals that dispose of more wetlands and/or riparian areas than are acquired by BLM, in order to acquire some other valuable resource or lands, with no conservation easement protection of the disposed public lands.

Wild Horses

- Proposals that acquire more nonfederal land within wild horse herd management areas than are disposed of.
- Proposals that exchange essentially the same amount, type, and quality of wild horse herd management area.
- Proposals that dispose of more wild horse herd management area lands than are acquired by BLM, or that create isolated parcels of nonfederal land within wild horse herd management areas, in order to acquire some other valuable resources or lands.

Wildlife, T&E, and Sensitive Plants Habitat

Crucial Winter Ranges for Big Game:

Consideration of crucial winter ranges (CWR) in land exchanges must include evaluation of species type, different range areas, quality of the range herd population levels and health, and the results of consultation with the Wyoming Game and Fish Department. Generally, exchange proposals involving CWR for multiple big game species would have preference over proposals involving CWR for only one big game species. Each proposal, however, will be considered on its own merits. Exchange proposals may involve CWR for pronghorn antelope, mule deer, elk, moose, big horn sheep and/or white-tailed deer. Examples of proposals which would be considered (but not listed in any priority order) are:

- Proposals that acquire more CWR than is transferred to nonfederal ownership for one or more big game species in the same CWR.

- Proposals in which poor-quality public land CWR is exchanged for better-quality CWR for one or more big game species in the same CWR.
- Proposals that exchange nearly equal acreages of CWR, for the same or multiple species, in the same CWR.
- Proposals where CWR is transferred from federal ownership to nonfederal ownership, but the former federal lands (and the habitat) are preserved by a conservation easement.

Strutting/Dancing Grounds and Nesting Habits

Generally, proposals involving sage grouse or sharp-tailed grouse strutting/dancing grounds and nesting habits would be evaluated on the basis of the quality of the habitat, the local population levels/histories, and the results of consultation with the Wyoming Game and Fish Department. Examples of proposals which would be considered (but not listed in any priority order) are:

- Proposals which acquire more of these habitats than are transferred into nonfederal ownership.
- Proposals that result in exchange of approximately equal amounts of these types of habitat.
- Proposals that result in a net federal reduction in acres of these types of habitats, but the former public lands (and the habitat values) are preserved by a conservation easement.
- Proposals that result in more acres of these habitats transferred into nonfederal ownership than are acquired.

Threatened, Endangered, Sensitive Species

Proposals involving the acquisition of T&E or otherwise sensitive plant or animal species habitat would generally be considered high priority actions. Proposals could involve black-footed ferret or mountain plover habitat (prairie dog colonies), Ute-ladies tresses habitat, or habitat associated with other special status species. Generally proposals would be evaluated on the basis of the quality of the habitat, the acreage of habitat involved, and the results of consultation with both the US Fish and Wildlife Service and the Wyoming Game and Fish Department. Examples of proposals would be

similar to those described above for big game species and for sage/sharp-tailed grouse.

Wilderness Study Areas (WSA)

- High priority is given to land exchange proposals in which nonfederal inholdings within WSA boundaries are acquired for federal ownership.

Generally, lands under wilderness review may not be disposed of through any means, including exchanges.